

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 658

Introduced by Assembly Member Charles Calderon

February 16, 2011

An act to amend ~~Section 107~~ Sections 30459.15, 50156.18, and 55332.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 658, as amended, Charles Calderon. ~~Possessory interests. State Board of Equalization: administration.~~

Existing law provides for the administration of various taxes, fees, and surcharges by the State Board of Equalization. The Cigarette and Tobacco Products Tax Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law authorize the State Board of Equalization to compromise a final tax, fee, or surcharge liability that was generated from a business that has been discontinued or transferred, as specified. The Fee Collection Procedures Law makes any person who takes certain willful actions in connection with an offer or compromise under that law, including receiving, withholding, destroying, mutilating, or falsifying any book, document, or record, or making any false statement relating to the estate fee, guilty of a felony, punishable as specified.

This bill would revise these provisions to make a person who receives, withholds, destroys, mutilates, or falsifies any book, document, or record or makes any false statement relating to the estate or financial condition of the feepayer or other person liable with respect to the fee guilty of a felony, as specified. The bill would also make other nonsubstantive changes.

By expanding the scope of existing criminal penalties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing property tax law requires that all property subject to tax be assessed at its full value, and includes certain possessory interests among those property interests subject to tax. Existing property tax law defines a taxable possessory interest to be a use that is independent, durable, and exclusive.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 30459.15 of the Revenue and Taxation*
2 *Code, as amended by Section 574 of Chapter 15 of the Statutes of*
3 *2011, is amended to read:*

4 30459.15. (a) (1) Beginning on January 1, 2007, the executive
5 director and chief counsel of the board, or their delegates, may
6 compromise any final tax liability where the reduction of tax is
7 seven thousand five hundred dollars (\$7,500) or less.

8 (2) Except as provided in paragraph (3), the board, upon
9 recommendation by its executive director and chief counsel, jointly,
10 may compromise a final tax liability involving a reduction in tax
11 in excess of seven thousand five hundred dollars (\$7,500). Any
12 recommendation for approval of an offer in compromise that is
13 not either approved or disapproved within 45 days of the
14 submission of the recommendation shall be deemed approved.

15 (3) The board, itself, may by resolution delegate to the executive
16 director and the chief counsel, jointly, the authority to compromise
17 a final tax liability in which the reduction of tax is in excess of
18 seven thousand five hundred dollars (\$7,500), but less than ten
19 thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 13 (commencing with Section 30001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated by the following:

(1) A business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) A taxpayer that has purchased untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(3) Notwithstanding paragraph (1) or (2), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means either of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected cigarette or tobacco products tax reimbursement ~~or cigarette or tobacco products tax reimbursement~~ from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 30201), Article 3 (commencing with Section 30221), or Article 5 (commencing with Section 30261) of Chapter 4.

(B) That part of a final tax liability for cigarette or tobacco products tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 30201), Article 3 (commencing with Section 30221), and Article 5 (commencing with Section 30261) of Chapter 4 against a taxpayer who is a consumer that is not

1 required to hold a license under Article 1 (commencing with
2 Section 30140) of Chapter 3.

3 (4) A qualified final tax liability may not be compromised with
4 any of the following:

5 (A) A taxpayer who previously received a compromise under
6 paragraph-~~(2)~~ (3) for a liability, or a part thereof, arising from a
7 transaction or transactions that are substantially similar to the
8 transaction or transactions attributable to the liability for which
9 the taxpayer is making the offer.

10 (B) A business that was transferred by a taxpayer who previously
11 received a compromise under paragraph-~~(2)~~ (3) and who has a
12 controlling interest or association with the transferred business,
13 when the liability for which the offer is made is attributable to a
14 transaction or transactions substantially similar to the transaction
15 or transactions for which the taxpayer's liability was previously
16 compromised.

17 (C) A business in which a taxpayer who previously received a
18 compromise under paragraph-~~(2)~~ (3) has a controlling interest or
19 association with a similar type of business for which the taxpayer
20 received the compromise, when the liability of the business making
21 the offer arose from a transaction or transactions substantially
22 similar to the transaction or transactions for which the taxpayer's
23 liability was previously compromised.

24 (d) The board may, in its discretion, enter into a written
25 agreement which permits the taxpayer to pay the compromise in
26 installments for a period not exceeding one year. The agreement
27 may provide that such installments shall be paid by electronic
28 funds transfers or any other means to facilitate the payment of each
29 installment.

30 (e) Except for any recommendation for approval as specified
31 in subdivision (a), the members of the State Board of Equalization
32 shall not participate in any offer in compromise matters pursuant
33 to this section.

34 (f) A taxpayer that has received a compromise under paragraph
35 ~~(2)~~ (3) of subdivision (c) may be required to enter into any
36 collateral agreement that is deemed necessary for the protection
37 of the interests of the state. A collateral agreement may include a
38 provision that allows the board to reestablish the liability, or any
39 portion thereof, if the taxpayer has sufficient annual income during
40 the succeeding five-year period. The board shall establish criteria

1 for determining “sufficient annual income” for purposes of this
2 subdivision.

3 (g) A taxpayer that has received a compromise under paragraph
4 ~~(2)~~ (3) of subdivision (c) shall file and pay by the due date all
5 subsequently required cigarette and tobacco products tax reports
6 or returns for a five-year period from the date the liability is
7 compromised, or until the taxpayer is no longer required to file
8 cigarette and tobacco products tax reports or returns, whichever
9 period is earlier.

10 (h) Offers in compromise shall not be considered under the
11 following conditions:

12 (1) The taxpayer has been convicted of felony tax evasion under
13 this part during the liability period.

14 (2) The taxpayer has filed a statement under paragraph (3) of
15 subdivision (i) and continues to purchase untaxed cigarettes or
16 tobacco products from out-of-state vendors for their own use or
17 consumption.

18 (i) For amounts to be compromised under this section, the
19 following conditions shall exist:

20 (1) The taxpayer shall establish that:

21 (A) The amount offered in payment is the most that can be
22 expected to be paid or collected from the taxpayer’s present assets
23 or income.

24 (B) The taxpayer does not have reasonable prospects of
25 acquiring increased income or assets that would enable the taxpayer
26 to satisfy a greater amount of the liability than the amount offered,
27 within a reasonable period of time.

28 (2) The board shall have determined that acceptance of the
29 compromise is in the best interest of the state.

30 (3) For liabilities generated in the manner described in paragraph
31 (2) of subdivision (c), the taxpayer shall file with the board a
32 statement, under penalty of perjury, that he or she will no longer
33 purchase untaxed cigarettes or tobacco products from out-of-state
34 vendors for his or her own use or consumption.

35 (j) A determination by the board that it would not be in the best
36 interest of the state to accept an offer in compromise in satisfaction
37 of a final tax liability shall not be subject to administrative appeal
38 or judicial review.

1 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
2 require a minimum offer of the unpaid tax and fraud or evasion
3 penalty.

4 (2) The minimum offer may be waived if it can be shown that
5 the taxpayer making the offer was not the person responsible for
6 perpetrating the fraud or evasion. This authorization to waive only
7 applies to partnership accounts where the intent to commit fraud
8 or evasion can be clearly attributed to a partner of the taxpayer.

9 (l) When an offer in compromise is either accepted or rejected,
10 or the terms and conditions of a compromise agreement are
11 fulfilled, the board shall notify the taxpayer in writing. In the event
12 an offer is rejected, the amount posted will either be applied to the
13 liability or refunded, at the discretion of the taxpayer.

14 (m) When more than one taxpayer is liable for the debt, such
15 as with spouses or partnerships or other business combinations,
16 including, but not limited to, taxpayers who are liable through dual
17 determination or successor's liability, the acceptance of an offer
18 in compromise from one liable taxpayer shall reduce the amount
19 of the liability of the other taxpayers by the amount of the accepted
20 offer.

21 (n) Whenever a compromise of tax or penalties or total tax and
22 penalties in excess of five hundred dollars (\$500) is approved,
23 there shall be placed on file for at least one year in the office of
24 the executive director of the board a public record with respect to
25 that compromise. The public record shall include all of the
26 following information:

27 (1) The name of the taxpayer.

28 (2) The amount of unpaid tax and related penalties, additions
29 to tax, interest, or other amounts involved.

30 (3) The amount offered.

31 (4) A summary of the reason why the compromise is in the best
32 interest of the state.

33 The public record shall not include any information that relates
34 to any trade secrets, patent, process, style of work, apparatus,
35 business secret, or organizational structure, that if disclosed, would
36 adversely affect the taxpayer or violate the confidentiality
37 provisions of Section 30455. No list shall be prepared and no
38 releases distributed by the board in connection with these
39 statements.

1 (o) Any compromise made under this section may be rescinded,
2 all compromised liabilities may be reestablished, without regard
3 to any statute of limitations that otherwise may be applicable, and
4 no portion of the amount offered in compromise refunded, if either
5 of the following occurs:

6 (1) The board determines that any person did any of the
7 following acts regarding the making of the offer:

8 (A) Concealed from the board any property belonging to the
9 estate of any taxpayer or other person liable for the tax.

10 (B) Received, withheld, destroyed, mutilated, or falsified any
11 book, document, or record or made any false statement, relating
12 to the estate or financial condition of the taxpayer or other person
13 liable for the tax.

14 (2) The taxpayer fails to comply with any of the terms and
15 conditions relative to the offer.

16 (p) Any person who, in connection with any offer or compromise
17 under this section, or offer of that compromise to enter into that
18 agreement, willfully does either of the following shall be guilty of
19 a felony and, upon conviction, shall be fined not more than fifty
20 thousand dollars (\$50,000) or imprisoned pursuant to subdivision
21 (h) of Section 1170 of the Penal Code, or both, together with the
22 costs of investigation and prosecution:

23 (1) Conceals from any officer or employee of this state any
24 property belonging to the estate of a taxpayer or other person liable
25 in respect of the tax.

26 (2) Receives, withholds, destroys, mutilates, or falsifies any
27 book, document, or record, or makes any false statement, relating
28 to the estate or financial condition of the taxpayer or other person
29 liable in respect of the tax.

30 (q) For purposes of this section, "person" means the taxpayer,
31 any member of the taxpayer's family, any corporation, agent,
32 fiduciary, or representative of, or any other individual or entity
33 acting on behalf of, the taxpayer, or any other corporation or entity
34 owned or controlled by the taxpayer, directly or indirectly, or that
35 owns or controls the taxpayer, directly or indirectly.

36 (r) This section shall remain in effect only until January 1, 2013,
37 and as of that date is repealed, unless a later enacted statute, that
38 is enacted before January 1, 2013, deletes or extends that date.

1 *SEC. 2. Section 50156.18 of the Revenue and Taxation Code,*
2 *as amended by Section 590 of Chapter 15 of the Statutes of 2011,*
3 *is amended to read:*

4 50156.18. (a) (1) Beginning January 1, 2003, the executive
5 director and chief counsel of the board, or their delegates, may
6 compromise any final fee liability in which the reduction of the
7 fee is seven thousand five hundred dollars (\$7,500) or less.

8 (2) Except as provided in paragraph (3), the board, upon
9 recommendation by its executive director and chief counsel, jointly,
10 may compromise a final fee liability involving a reduction in the
11 fee in excess of seven thousand five hundred dollars (\$7,500). Any
12 recommendation for approval of an offer in compromise that is
13 not either approved or disapproved within 45 days of the
14 submission of the recommendation shall be deemed approved.

15 (3) The board, itself, may by resolution delegate to the executive
16 director and the chief counsel, jointly, the authority to compromise
17 a final fee liability in which the reduction of the fee is in excess
18 of seven thousand five hundred dollars (\$7,500), but less than ten
19 thousand dollars (\$10,000).

20 (b) For purposes of this section, “a final fee liability” means
21 any final fee liability arising under Part 26 (commencing with
22 Section 50101), or related interest, additions to the fee, penalties,
23 or other amounts assessed under this part.

24 (c) (1) Offers in compromise shall be considered only for
25 liabilities that were generated from a business that has been
26 discontinued or transferred, where the feepayer making the offer
27 no longer has a controlling interest or association with the
28 transferred business or has a controlling interest or association
29 with a similar type of business as the transferred or discontinued
30 business.

31 (2) Notwithstanding paragraph (1), a qualified final fee liability
32 may be compromised regardless of whether the business has been
33 discontinued or transferred or whether the feepayer has a
34 controlling interest or association with a similar type of business
35 as the transferred or discontinued business. All other provisions
36 of this section that apply to a final fee liability shall also apply to
37 a qualified final fee liability, and no compromise shall be made
38 under this subdivision unless all other requirements of this section
39 are met. For purposes of this subdivision, a “qualified final fee
40 liability” means that part of a final fee liability, including related

1 interest, additions to fee, penalties, or other amounts assessed under
2 this part, arising from a transaction or transactions in which the
3 board finds no evidence that the owner of the underground storage
4 tank collected underground storage tank maintenance fee
5 reimbursement from the operator of the underground storage tank
6 or other person and which was determined against the feepayer
7 under Article 2 (commencing with Section 50113) or Article 3
8 (commencing with Section 50114) of Chapter 3.

9 (3) A qualified final fee liability may not be compromised with
10 any of the following:

11 (A) A feepayer who previously received a compromise under
12 paragraph (2) for a liability, or a part thereof, arising from a
13 transaction or transactions that are substantially similar to the
14 transaction or transactions attributable to the liability for which
15 the feepayer is making the offer.

16 (B) A business that was transferred by a feepayer who previously
17 received a compromise under paragraph (2) and who has a
18 controlling interest or association with the transferred business,
19 when the liability for which the offer is made is attributable to a
20 transaction or transactions substantially similar to the transaction
21 or transactions for which the feepayer's liability was previously
22 compromised.

23 (C) A business in which a feepayer who previously received a
24 compromise under paragraph (2) has a controlling interest or
25 association with a similar type of business for which the feepayer
26 received the compromise, when the liability of the business making
27 the offer arose from a transaction or transactions substantially
28 similar to the transaction or transactions for which the feepayer's
29 liability was previously compromised.

30 (d) The board may, in its discretion, enter into a written
31 agreement which permits the feepayer to pay the compromise in
32 installments for a period not exceeding one year. The agreement
33 may provide that such installments shall be paid by electronic
34 funds transfers or any other means to facilitate the payment of each
35 installment.

36 (e) Except for any recommendation for approval as specified
37 in subdivision (a), the members of the State Board of Equalization
38 shall not participate in any offer in compromise matters pursuant
39 to this section.

(f) A feepayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the feepayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining “sufficient annual income” for purposes of this subdivision.

(g) A feepayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required underground storage tank maintenance fee returns for a five-year period from the date the liability is compromised, or until the feepayer is no longer required to file underground storage tank maintenance fee returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer’s present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(k) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable feepayer

1 shall not relieve the other feepayers from paying the entire liability.
2 However, the amount of the liability shall be reduced by the amount
3 of the accepted offer.

4 (l) Whenever a compromise of the fee or penalties or total fees
5 and penalties in excess of five hundred dollars (\$500) is approved,
6 there shall be placed on file for at least one year in the office of
7 the executive director of the board a public record with respect to
8 that compromise. The public record shall include all of the
9 following information:

10 (1) The name of the feepayer.

11 (2) The amount of unpaid fees and related penalties, additions
12 to fees, interest, or other amounts involved.

13 (3) The amount offered.

14 (4) A summary of the reason why the compromise is in the best
15 interest of the state.

16 The public record shall not include any information that relates
17 to any trade secrets, patent, process, style of work, apparatus,
18 business secret, or organizational structure, that if disclosed, would
19 adversely affect the feepayer or violate the confidentiality
20 provisions of Chapter 8 of Article 2 (commencing with Section
21 ~~50156~~ 50159). No list shall be prepared and no releases distributed
22 by the board in connection with these statements.

23 (m) Any compromise made under this section may be rescinded,
24 all compromised liabilities may be reestablished (without regard
25 to any statute of limitations that otherwise may be applicable), and
26 no portion of the amount offered in compromise refunded, if either
27 of the following occurs:

28 (1) The board determines that any person did any of the
29 following acts regarding the making of the offer:

30 (A) Concealed from the board any property belonging to the
31 estate of any feepayer or other person liable for the fee.

32 (B) Received, withheld, destroyed, mutilated, or falsified any
33 book, document, or record or made any false statement, relating
34 to the estate or financial condition of the feepayer or other person
35 liable for the fee.

36 (2) The feepayer fails to comply with any of the terms and
37 conditions relative to the offer.

38 (n) Any person who, in connection with any offer or compromise
39 under this section, or offer of that compromise to enter into that
40 agreement, willfully does either of the following shall be guilty of

1 a felony and, upon conviction, shall be fined not more than fifty
2 thousand dollars (\$50,000) or imprisoned pursuant to subdivision
3 (h) of Section 1170 of the Penal Code, or both, together with the
4 costs of investigation and prosecution:

5 (1) Conceals from any officer or employee of this state any
6 property belonging to the estate of a feepayer or other person liable
7 in respect of the fee.

8 (2) Receives, withholds, destroys, mutilates, or falsifies any
9 book, document, or record, or makes any false statement, relating
10 to the estate or financial condition of the feepayer or other person
11 liable in respect of the fee.

12 (o) For purposes of this section, “person” means the feepayer,
13 any member of the feepayer’s family, any corporation, agent,
14 fiduciary, or representative of, or any other individual or entity
15 acting on behalf of, the feepayer, or any other corporation or entity
16 owned or controlled by the feepayer, directly or indirectly, or that
17 owns or controls the feepayer, directly or indirectly.

18 (p) This section shall remain in effect only until January 1, 2013,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2013, deletes or extends that date.

21 *SEC. 3. Section 50156.18 of the Revenue and Taxation Code,*
22 *as amended by Section 591 of Chapter 15 of the Statutes of 2011,*
23 *is amended to read:*

24 50156.18. (a) (1) The executive director and chief counsel of
25 the board, or their delegates, may compromise any final fee liability
26 in which the reduction of the fee is seven thousand five hundred
27 dollars (\$7,500) or less.

28 (2) Except as provided in paragraph (3), the board, upon
29 recommendation by its executive director and chief counsel, jointly,
30 may compromise a final fee liability involving a reduction in the
31 fee in excess of seven thousand five hundred dollars (\$7,500). Any
32 recommendation for approval of an offer in compromise that is
33 not either approved or disapproved within 45 days of the
34 submission of the recommendation shall be deemed approved.

35 (3) The board, itself, may by resolution delegate to the executive
36 director and the chief counsel, jointly, the authority to compromise
37 a final fee liability in which the reduction of the fee is in excess
38 of seven thousand five hundred dollars (\$7,500), but less than ten
39 thousand dollars (\$10,000).

1 (b) For purposes of this section, “a final fee liability” means
2 any final fee liability arising under Part 26 (commencing with
3 Section 50101), or related interest, additions to the fee, penalties,
4 or other amounts assessed under this part.

5 (c) Offers in compromise shall be considered only for liabilities
6 that were generated from a business that has been discontinued or
7 transferred, where the feepayer making the offer no longer has a
8 controlling interest or association with the transferred business or
9 has a controlling interest or association with a similar type of
10 business as the transferred or discontinued business.

11 (d) For amounts to be compromised under this section, the
12 following conditions shall exist:

13 (1) The feepayer shall establish that:

14 (A) The amount offered in payment is the most that can be
15 expected to be paid or collected from the feepayer’s present assets
16 or income.

17 (B) The feepayer does not have reasonable prospects of
18 acquiring increased income or assets that would enable the feepayer
19 to satisfy a greater amount of the liability than the amount offered,
20 within a reasonable period of time.

21 (2) The board shall have determined that acceptance of the
22 compromise is in the best interest of the state.

23 (e) A determination by the board that it would not be in the best
24 interest of the state to accept an offer in compromise in satisfaction
25 of a final fee liability shall not be subject to administrative appeal
26 or judicial review.

27 (f) When an offer in compromise is either accepted or rejected,
28 or the terms and conditions of a compromise agreement are
29 fulfilled, the board shall notify the feepayer in writing. In the event
30 an offer is rejected, the amount posted will either be applied to the
31 liability or refunded, at the discretion of the feepayer.

32 (g) When more than one feepayer is liable for the debt, such as
33 with spouses or partnerships or other business combinations, the
34 acceptance of an offer in compromise from one liable feepayer
35 shall not relieve the other feepayers from paying the entire liability.
36 However, the amount of the liability shall be reduced by the amount
37 of the accepted offer.

38 (h) Whenever a compromise of the fee or penalties or total fees
39 and penalties in excess of five hundred dollars (\$500) is approved,
40 there shall be placed on file for a least one year in the office of the

1 executive director of the board a public record with respect to that
2 compromise. The public record shall include all of the following
3 information:

- 4 (1) The name of the feepayer.
- 5 (2) The amount of unpaid fees and related penalties, additions
6 to fees, interest, or other amounts involved.
- 7 (3) The amount offered.
- 8 (4) A summary of the reason why the compromise is in the best
9 interest of the state.

10 The public record shall not include any information that relates
11 to any trade secrets, patent, process, style of work, apparatus,
12 business secret, or organizational structure, that if disclosed, would
13 adversely affect the feepayer or violate the confidentiality
14 provisions of Chapter 8 of Article 2 (commencing with Section
15 ~~50156~~ 50159). No list shall be prepared and no releases distributed
16 by the board in connection with these statements.

17 (i) Any compromise made under this section may be rescinded,
18 all compromised liabilities may be reestablished (without regard
19 to any statute of limitations that otherwise may be applicable), and
20 no portion of the amount offered in compromise refunded, if either
21 of the following occurs:

22 (1) The board determines that any person did any of the
23 following acts regarding the making of the offer:

24 (A) Concealed from the board any property belonging to the
25 estate of any feepayer or other person liable for the fee.

26 (B) Received, withheld, destroyed, mutilated, or falsified any
27 book, document, or record or made any false statement, relating
28 to the estate or financial condition of the feepayer or other person
29 liable for the fee.

30 (2) The feepayer fails to comply with any of the terms and
31 conditions relative to the offer.

32 (j) Any person who, in connection with any offer or compromise
33 under this section, or offer of that compromise to enter into that
34 agreement, willfully does either of the following shall be guilty of
35 a felony and, upon conviction, shall be fined not more than fifty
36 thousand dollars (\$50,000) or imprisoned pursuant to subdivision

37 (h) of Section 1170 of the Penal Code, or both, together with the
38 costs of investigation and prosecution:

1 (1) Conceals from any officer or employee of this state any
2 property belonging to the estate of a feepayer or other person liable
3 in respect of the fee.

4 (2) Receives, withholds, destroys, mutilates, or falsifies any
5 book, document, or record, or makes any false statement, relating
6 to the estate or financial condition of the feepayer or other person
7 liable in respect of the fee.

8 (k) For purposes of this section, “person” means the feepayer,
9 any member of the feepayer’s family, any corporation, agent,
10 fiduciary, or representative of, or any other individual or entity
11 acting on behalf of, the feepayer, or any other corporation or entity
12 owned or controlled by the feepayer, directly or indirectly, or that
13 owns or controls the feepayer, directly or indirectly.

14 (l) This section shall become operative on January 1, 2013.

15 *SEC. 4. Section 55332.5 of the Revenue and Taxation Code,*
16 *as amended by Section 592 of Chapter 15 of Statutes of 2011, is*
17 *amended to read:*

18 55332.5. (a) (1) Beginning on January 1, 2007, the executive
19 director and chief counsel of the board, or their delegates, may
20 compromise any final fee liability where the reduction of fees is
21 seven thousand five hundred dollars (\$7,500) or less.

22 (2) Except as provided in paragraph (3), the board, upon
23 recommendation by its executive director and chief counsel, jointly,
24 may compromise a final fee liability involving a reduction in fees
25 in excess of seven thousand five hundred dollars (\$7,500). Any
26 recommendation for approval of an offer in compromise that is
27 not either approved or disapproved within 45 days of the
28 submission of the recommendation shall be deemed approved.

29 (3) The board, itself, may by resolution delegate to the executive
30 director and the chief counsel, jointly, the authority to compromise
31 a final fee liability in which the reduction of fees is in excess of
32 seven thousand five hundred dollars (\$7,500), but less than ten
33 thousand dollars (\$10,000).

34 (b) For purposes of this section, “a final fee liability” means
35 any final fee liability arising under Part 30 (commencing with
36 Section 55001), or related interest, additions to fees, penalties, or
37 other amounts assessed under this part.

38 (c) (1) Offers in compromise shall be considered only for
39 liabilities that were generated from a business that has been
40 discontinued or transferred, where the feepayer making the offer

1 no longer has a controlling interest or association with the
2 transferred business or has a controlling interest or association
3 with a similar type of business as the transferred or discontinued
4 business.

5 (2) Notwithstanding paragraph (1), a qualified final fee liability
6 may be compromised regardless of whether the business has been
7 discontinued or transferred or whether the feepayer has a
8 controlling interest or association with a similar type of business
9 as the transferred or discontinued business. All other provisions
10 of this section that apply to a final fee liability shall also apply to
11 a qualified final fee liability, and no compromise shall be made
12 under this subdivision unless all other requirements of this section
13 are met. For purposes of this subdivision, a “qualified final fee
14 liability” means that part of a final fee liability, including related
15 interest, additions to fee, penalties, or other amounts assessed under
16 this part, arising from a transaction or transactions in which the
17 board finds no evidence that the feepayer collected the fee from
18 the purchaser or other person and which was determined against
19 the feepayer under Article 2 (commencing with Section 55061) or
20 Article 3 (commencing with Section 55081) of Chapter 3.

21 (3) A qualified final fee liability may not be compromised with
22 any of the following:

23 (A) A feepayer who previously received a compromise under
24 paragraph (2) for a liability, or a part thereof, arising from a
25 transaction or transactions that are substantially similar to the
26 transaction or transactions attributable to the liability for which
27 the feepayer is making the offer.

28 (B) A business that was transferred by a feepayer who previously
29 received a compromise under paragraph (2) and who has a
30 controlling interest or association with the transferred business,
31 when the liability for which the offer is made is attributable to a
32 transaction or transactions substantially similar to the transaction
33 or transactions for which the feepayer’s liability was previously
34 compromised.

35 (C) A business in which a feepayer who previously received a
36 compromise under paragraph (2) has a controlling interest or
37 association with a similar type of business for which the feepayer
38 received the compromise, when the liability of the business making
39 the offer arose from a transaction or transactions substantially

1 similar to the transaction or transactions for which the feepayer's
2 liability was previously compromised.

3 (d) The board may, in its discretion, enter into a written
4 agreement which permits the feepayer to pay the compromise in
5 installments for a period not exceeding one year. The agreement
6 may provide that such installments shall be paid by electronic
7 funds transfers or any other means to facilitate the payment of each
8 installment.

9 (e) Except for any recommendation for approval as specified
10 in subdivision (a), the members of the State Board of Equalization
11 shall not participate in any offer in compromise matters pursuant
12 to this section.

13 (f) A feepayer that has received a compromise under paragraph
14 (2) of subdivision (c) may be required to enter into any collateral
15 agreement that is deemed necessary for the protection of the
16 interests of the state. A collateral agreement may include a
17 provision that allows the board to reestablish the liability, or any
18 portion thereof, if the feepayer has sufficient annual income during
19 the succeeding five-year period. The board shall establish criteria
20 for determining "sufficient annual income" for purposes of this
21 subdivision.

22 (g) A feepayer that has received a compromise under paragraph
23 (2) of subdivision (c) shall file and pay by the due date all
24 subsequently required returns for a five-year period from the date
25 the liability is compromised, or until the feepayer is no longer
26 required to file returns, whichever period is earlier.

27 (h) Offers in compromise shall not be considered where the
28 feepayer has been convicted of felony tax evasion under this part
29 during the liability period.

30 (i) For amounts to be compromised under this section, the
31 following conditions shall exist:

32 (1) The feepayer shall establish that:

33 (A) The amount offered in payment is the most that can be
34 expected to be paid or collected from the feepayer's present assets
35 or income.

36 (B) The feepayer does not have reasonable prospects of
37 acquiring increased income or assets that would enable the feepayer
38 to satisfy a greater amount of the liability than the amount offered,
39 within a reasonable period of time.

1 (2) The board shall have determined that acceptance of the
2 compromise is in the best interest of the state.

3 (j) A determination by the board that it would not be in the best
4 interest of the state to accept an offer in compromise in satisfaction
5 of a final fee liability shall not be subject to administrative appeal
6 or judicial review.

7 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
8 require a minimum offer of the unpaid fee and fraud or evasion
9 penalty.

10 (2) The minimum offer may be waived if it can be shown that
11 the feepayer making the offer was not the person responsible for
12 perpetrating the fraud or evasion. This authorization to waive only
13 applies to partnership accounts where the intent to commit fraud
14 or evasion can be clearly attributed to a partner of the feepayer.

15 (l) When an offer in compromise is either accepted or rejected,
16 or the terms and conditions of a compromise agreement are
17 fulfilled, the board shall notify the feepayer in writing. In the event
18 an offer is rejected, the amount posted will either be applied to the
19 liability or refunded, at the discretion of the feepayer.

20 (m) When more than one feepayer is liable for the debt, such
21 as with spouses or partnerships or other business combinations,
22 including, but not limited to, feepayers who are liable through dual
23 determination or successor's liability, the acceptance of an offer
24 in compromise from one liable feepayer shall reduce the amount
25 of the liability of the other feepayers by the amount of the accepted
26 offer.

27 (n) Whenever a compromise of fees or penalties or total fees
28 and penalties in excess of five hundred dollars (\$500) is approved,
29 there shall be placed on file for at least one year in the office of
30 the executive director of the board a public record with respect to
31 that compromise. The public record shall include all of the
32 following information:

33 (1) The name of the feepayer.

34 (2) The amount of unpaid fees and related penalties, additions
35 to fees, interest, or other amounts involved.

36 (3) The amount offered.

37 (4) A summary of the reason why the compromise is in the best
38 interest of the state.

39 The public record shall not include any information that relates
40 to any trade secrets, patent, process, style of work, apparatus,

1 business secret, or organizational structure, that if disclosed, would
2 adversely affect the feepayer or violate the confidentiality
3 provisions of Section 55381. No list shall be prepared and no
4 releases distributed by the board in connection with these
5 statements.

6 (o) Any compromise made under this section may be rescinded,
7 all compromised liabilities may be reestablished, without regard
8 to any statute of limitations that otherwise may be applicable, and
9 no portion of the amount offered in compromise refunded, if either
10 of the following occurs:

11 (1) The board determines that any person did any of the
12 following acts regarding the making of the offer:

13 (A) Concealed from the board any property belonging to the
14 estate of any feepayer or other person liable for the fee.

15 (B) Received, withheld, destroyed, mutilated, or falsified any
16 book, document, or record or made any false statement, relating
17 to the estate or financial condition of the feepayer or other person
18 liable for the fee.

19 (2) The feepayer fails to comply with any of the terms and
20 conditions relative to the offer.

21 (p) Any person who, in connection with any offer or compromise
22 under this section, or offer of that compromise to enter into that
23 agreement, willfully does either of the following shall be guilty of
24 a felony and, upon conviction, shall be fined not more than fifty
25 thousand dollars (\$50,000) or imprisoned pursuant to subdivision
26 (h) of Section 1170 of the Penal Code, or both, together with the
27 costs of investigation and prosecution:

28 (1) Conceals from any officer or employee of this state any
29 property belonging to the estate of a feepayer or other person liable
30 in respect of the fee.

31 (2) Receives, withholds, destroys, mutilates, or falsifies any
32 book, document, or record, or makes any false statement, relating
33 to the estate *or financial condition of the feepayer or other person*
34 *liable with respect to the fee.*

35 (q) For purposes of this section, “person” means the feepayer,
36 any member of the feepayer’s family, any corporation, agent,
37 fiduciary, or representative of, or any other individual or entity
38 acting on behalf of, the feepayer, or any other corporation or entity
39 owned or controlled by the feepayer, directly or indirectly, or that
40 owns or controls the feepayer, directly or indirectly.

1 (r) This section shall remain in effect only until January 1, 2013,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2013, deletes or extends that date.

4 *SEC. 5. Section 55332.5 of the Revenue and Taxation Code,*
5 *as amended by Section 593 of Chapter 15 of the Statutes of 2011,*
6 *is amended to read:*

7 55332.5. (a) (1) The executive director and chief counsel of
8 the board, or their delegates, may compromise any final fee liability
9 where the reduction of fees is seven thousand five hundred dollars
10 (\$7,500) or less.

11 (2) Except as provided in paragraph (3), the board, upon
12 recommendation by its executive director and chief counsel, jointly,
13 may compromise a final fee liability involving a reduction in fees
14 in excess of seven thousand five hundred dollars (\$7,500). Any
15 recommendation for approval of an offer in compromise that is
16 not either approved or disapproved within 45 days of the
17 submission of the recommendation shall be deemed approved.

18 (3) The board, itself, may by resolution delegate to the executive
19 director and the chief counsel, jointly, the authority to compromise
20 a final fee liability in which the reduction of fees is in excess of
21 seven thousand five hundred dollars (\$7,500), but less than ten
22 thousand dollars (\$10,000).

23 (b) For purposes of this section, “a final fee liability” means
24 any final fee liability arising under Part 30 (commencing with
25 Section 55001), or related interest, additions to fees, penalties, or
26 other amounts assessed under this part.

27 (c) Offers in compromise shall be considered only for liabilities
28 that were generated from a business that has been discontinued or
29 transferred, where the feepayer making the offer no longer has a
30 controlling interest or association with the transferred business or
31 has a controlling interest or association with a similar type of
32 business as the transferred or discontinued business.

33 (d) Offers in compromise shall not be considered where the
34 feepayer has been convicted of felony tax evasion under this part
35 during the liability period.

36 (e) For amounts to be compromised under this section, the
37 following conditions shall exist:

38 (1) The feepayer shall establish that:

1 (A) The amount offered in payment is the most that can be
2 expected to be paid or collected from the feepayer's present assets
3 or income.

4 (B) The feepayer does not have reasonable prospects of
5 acquiring increased income or assets that would enable the feepayer
6 to satisfy a greater amount of the liability than the amount offered,
7 within a reasonable period of time.

8 (2) The board shall have determined that acceptance of the
9 compromise is in the best interest of the state.

10 (f) A determination by the board that it would not be in the best
11 interest of the state to accept an offer in compromise in satisfaction
12 of a final fee liability shall not be subject to administrative appeal
13 or judicial review.

14 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
15 require a minimum offer of the unpaid fee and fraud or evasion
16 penalty.

17 (2) The minimum offer may be waived if it can be shown that
18 the feepayer making the offer was not the person responsible for
19 perpetrating the fraud or evasion. This authorization to waive only
20 applies to partnership accounts where the intent to commit fraud
21 or evasion can be clearly attributed to a partner of the feepayer.

22 (h) When an offer in compromise is either accepted or rejected,
23 or the terms and conditions of a compromise agreement are
24 fulfilled, the board shall notify the feepayer in writing. In the event
25 an offer is rejected, the amount posted will either be applied to the
26 liability or refunded, at the discretion of the feepayer.

27 (i) When more than one feepayer is liable for the debt, such as
28 with spouses or partnerships or other business combinations,
29 including, but not limited to, feepayers who are liable through dual
30 determination or successor's liability, the acceptance of an offer
31 in compromise from one liable feepayer shall reduce the amount
32 of the liability of the other feepayers by the amount of the accepted
33 offer.

34 (j) Whenever a compromise of fees or penalties or total fees
35 and penalties in excess of five hundred dollars (\$500) is approved,
36 there shall be placed on file for at least one year in the office of
37 the executive director of the board a public record with respect to
38 that compromise. The public record shall include all of the
39 following information:

40 (1) The name of the feepayer.

1 (2) The amount of unpaid fees and related penalties, additions
2 to fees, interest, or other amounts involved.

3 (3) The amount offered.

4 (4) A summary of the reason why the compromise is in the best
5 interest of the state.

6 The public record shall not include any information that relates
7 to any trade secrets, patent, process, style of work, apparatus,
8 business secret, or organizational structure, that if disclosed, would
9 adversely affect the feepayer or violate the confidentiality
10 provisions of Section 55381. No list shall be prepared and no
11 releases distributed by the board in connection with these
12 statements.

13 (k) Any compromise made under this section may be rescinded,
14 all compromised liabilities may be reestablished, without regard
15 to any statute of limitations that otherwise may be applicable, and
16 no portion of the amount offered in compromise refunded, if either
17 of the following occurs:

18 (1) The board determines that any person did any of the
19 following acts regarding the making of the offer:

20 (A) Concealed from the board any property belonging to the
21 estate of any feepayer or other person liable for the fee.

22 (B) Received, withheld, destroyed, mutilated, or falsified any
23 book, document, or record or made any false statement, relating
24 to the estate or financial condition of the feepayer or other person
25 liable for the fee.

26 (2) The feepayer fails to comply with any of the terms and
27 conditions relative to the offer.

28 (l) Any person who, in connection with any offer or compromise
29 under this section, or offer of that compromise to enter into that
30 agreement, willfully does either of the following shall be guilty of
31 a felony and, upon conviction, shall be fined not more than fifty
32 thousand dollars (\$50,000) or imprisoned pursuant to subdivision
33 (h) of Section 1170 of the Penal Code, or both, together with the
34 costs of investigation and prosecution:

35 (1) Conceals from any officer or employee of this state any
36 property belonging to the estate of a feepayer or other person liable
37 in respect of the fee.

38 (2) Receives, withholds, destroys, mutilates, or falsifies any
39 book, document, or record, or makes any false statement, relating

1 to the estate or financial condition of the feepayer or other person
2 liable with respect to the fee.

3 (m) For purposes of this section, “person” means the feepayer,
4 any member of the feepayer’s family, any corporation, agent,
5 fiduciary, or representative of, or any other individual or entity
6 acting on behalf of, the feepayer, or any other corporation or entity
7 owned or controlled by the feepayer, directly or indirectly, or that
8 owns or controls the feepayer, directly or indirectly.

9 (n) This section shall become operative on January 1, 2013.

10 SEC. 6. *No reimbursement is required by this act pursuant*
11 *to Section 6 of Article XIII B of the California Constitution because*
12 *the only costs that may be incurred by a local agency or school*
13 *district will be incurred because this act creates a new crime or*
14 *infraction, eliminates a crime or infraction, or changes the penalty*
15 *for a crime or infraction, within the meaning of Section 17556 of*
16 *the Government Code, or changes the definition of a crime within*
17 *the meaning of Section 6 of Article XIII B of the California*
18 *Constitution.*

19 SECTION 1. ~~Section 107 of the Revenue and Taxation Code~~
20 ~~is amended to read:~~

21 ~~107. “Possessory interests” means the following:~~

22 (a) ~~Possession of, claim to, or right to the possession of land or~~
23 ~~improvements that is independent, durable, and exclusive of rights~~
24 ~~held by others in the property, except when coupled with ownership~~
25 ~~of the land or improvements in the same person. For the purposes~~
26 ~~of this subdivision:~~

27 (1) ~~“Independent” means the ability to exercise authority and~~
28 ~~exert control over the management or operation of the property or~~
29 ~~improvements, separate and apart from the policies, statutes,~~
30 ~~ordinances, rules, and regulations of the public owner of the~~
31 ~~property or improvements. A possession or use is independent if~~
32 ~~the possession or operation of the property is sufficiently~~
33 ~~autonomous to constitute more than a mere agency.~~

34 (2) ~~“Durable” means for a determinable period with a reasonable~~
35 ~~certainty that the use, possession, or claim with respect to the~~
36 ~~property or improvements will continue for that period.~~

37 (3) ~~“Exclusive” means the enjoyment of a beneficial use of land~~
38 ~~or improvements, together with the ability to exclude from~~
39 ~~occupaney by means of legal process others who may interfere~~

1 with that enjoyment. For purposes of this paragraph, “exclusive
2 use” includes the following types of use in property:

3 (A) Sole occupancy or use of property or improvements.

4 (B) Use as a cotenant.

5 (C) Concurrent use by a person who has a primary or prevailing
6 right to use property or improvements at any time.

7 (D) Concurrent uses by persons making qualitatively different
8 uses of property or improvements.

9 (E) Concurrent use by persons engaged in similar uses that
10 diminish the quantity or quality of the property or improvements.

11 (F) Concurrent use that does not diminish the quantity or quality
12 of the property or improvements, if the number of those concurrent
13 use grants is restricted.

14 A use of property or improvements that does not contain one of
15 the elements in subparagraphs (A) to (F), inclusive, shall be
16 rebuttably presumed to be a nonexclusive use.

17 (b) Taxable improvements on tax-exempt land.

18 Any possessory interest may, in the discretion of the county
19 board of supervisors, be considered sufficient security for the
20 payment of any taxes levied thereon and may be placed on the
21 secured roll.

22 Leasehold estates for the production of gas, petroleum and other
23 hydrocarbon substances from beneath the surface of the earth, and
24 other rights relating to these substances which constitute
25 incorporeal hereditaments or profits a prendre, are sufficient
26 security for the payment of taxes levied thereon. These estates and
27 rights shall not be classified as possessory interests, but shall be
28 placed on the secured roll.

29 If the tax on any possessory interest or leasehold estate for the
30 production of gas, petroleum and other hydrocarbon substances is
31 unpaid when any installment of secured taxes become delinquent,
32 the tax collector may use those collection procedures which are
33 available for the collection of assessments on the unsecured roll.

34 If the tax on any possessory interest or leasehold estate for the
35 production of gas, petroleum and other hydrocarbon substances
36 remains unpaid at the time set for the declaration of default for
37 taxes carried on the secured roll, the possessory interest tax together

- 1 ~~with any penalty and costs which may be accrued thereon while~~
- 2 ~~on the secured roll shall be transferred to the unsecured roll.~~

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